

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANGELO J. MAROTTA AND
ALANNA MITCHELL AND
MIDAMERICA BANK, FSB,

Case No. 04-40193

Plaintiffs/
Counterclaim,
Defendants,

DISTRICT JUDGE PAUL V. GADOLA
MAGISTRATE JUDGE STEVEN D. PEPE

vs.

ROBIN LYNN KELLY AND
ROBERT VANHELLMONT,

Defendants,

and

UNITED STATES OF AMERICA,

Defendant/
Counterclaim Plaintiff.

_____ /

ORDER DENYING UNITED STATES' MOTION FOR PROTECTIVE ORDER (#18)

The United States of America filed its *Motion For A Protective Order* (#18) on May 23, 2005, seeking to avoid the deposition notices that plaintiffs served on four IRS employees. This motion was referred to the undersigned pursuant to 28 U.S.C. 636 (b)(1)(A) for a hearing and determination. A telephonic hearing was held on August 25, 2005, and, for the reasons stated below, the United States' motion is DENIED.

Judge Gadola denied the United States motion for summary disposition in this matter, in

which they argued that the plaintiff's case was without merit, and instructed the parties that such could not be considered until the close of discovery (# 11). In the present motion the United States asks the court to shield it from the plaintiffs' deposition notices on essentially the same grounds, i.e. the plaintiffs' case is non-meritorious. Yet, this request cannot be granted given Judge Gadola's earlier order that the plaintiffs be given a chance to complete discovery before the merits of their case is decided.

The deponents at issue: Richard Hannum, Gregory Turner, Bobbie Stafford and LeDere Burroughs, shall be deposed in October 2005. The scope of the depositions is limited to that which is necessary to clear up what Plaintiffs believe is ambiguity in the documents involved in establishing the payoff amount for the tax liens on the real property involved in this matter, and the transaction(s) between the receiver, Mr. Findling, and the IRS.

The depositions shall take place in the United States' Attorney's Office at the IRS in Michigan.

Within two weeks from the date of this order, the attorneys for Robin Kelly will attempt to secure Timothy Kelly's qualifying release (pursuant to 26 U.S.C. § 6103), so that the IRS may produce to plaintiffs the documents indicating how the tax liens at issue in this matter were calculated.

Dated: August 26, 2005
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

Certificate of Service

I hereby certify that copies of this Order were served upon the attorneys of record by electronic means or U. S. Mail on August 26, 2005.

s/William J. Barkholz
Courtroom Deputy Clerk